IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8939 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAMARSINGH MADANSINGH CONSTABLE RPF

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 8939 of 1999
SUNITA S CHATURVEDI for the Petitioner
MR MUKESH A PATEL for Respondent No. 1
MR JC SHETH for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 09/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

#. The petitioner challenges the orders removing him from service on the ground of absence from leave.

#. The petitioner joined the service as member of Armed Forces (RPF) in the Western Railway, Baroda Division. He requested the authorities to transfer him to Delhi Division due to his family circumstances and came to be transferred on 7.8.'92 to Northern Railway, but was relieved only on 7.8.'95. He reported for duty in the office of CSC on 13.8.'95, but he was listed on 14.8.95 for posting at Allahabad. He therefore requested the authority on 22.8.'95 that the purpose of his seeking transfer to Delhi Division of Northern Railway was to look after his widowed mother-in-law residing in Delhi and therefore to post him around Delhi on humanitarian ground or send him back to his previous place of duty. He sent representations and reminders for this purpose. According to the petitioner he was informed on 10th March, 1998 as per the letter at Annexure:G to the petition that he was transferred back on his own request, pursuant to the letter of the Railway Board, dated 2nd/6th May, 1996. According to the petitioner, he was earlier transferred to Northern Railway, in terms of the Railway Board's letter dated 7.7.'95, but those orders were cancelled by the Railway Board in April, 1996. Since he was informed much later about the cancellation of his transfer order by the Railway Board, he could report for being taken on duty only on 17.4.'98.

#. The fact that the Railway Board had cancelled its earlier order of transfer in April, 1996 was mentioned in the letter dated 23.4.1998 at Annexure:H to the petition issued by the Western Railway, Headquarter, Churchgate, with copies to all the concerned including the petitioner. The record therefore, clearly discloses that on the petitioner's representation, earlier order of his transfer dated 7.7.'95 came to be cancelled by the Railway Board's letter of Nil April, 1996, bearing no. 94/SEC/(E)/TR3/IR/Misc., which is referred to in the letter dated 23rd April, 1998. Once the order of transfer was cancelled on the representation of the petitioner, he was allowed to resume his duty at the original place and thereafter as stated in para-6 of the petition, he applied for leave for the period of his absence from 14.8.'95 to 17.4.'98. Pursuant to this application, the period of his absence was treated as "leave without pay", as no sufficient leave was at his credit. A typed copy of the order dated 8.10.'98 stating

that his period of absence was treated as "leave without pay" is at Annexure:I to the petition. The learned counsel for the petitioner has also placed on record, a zerox copy of the said order showing necessary signatures and endorsements, and a copy thereof is also given to the learned counsel for the respondent. There is no reason to doubt the genuineness of this order which shows that the absence of the petitioner was treated as "leave without pay". The order of the petitioner's transfer was cancelled by the Railway Board, pursuant to which he was allowed to resume duty and on the basis of which application for regularizing his absence, this order seems to have been made.

#. Once the unauthorised absence of the petitioner was treated as "leave without pay", there subsisted no question of any misconduct. The Supreme Court, while considering a similar question of an unauthorised absence, which was treated as "leave without pay", in State of Punjab and others Vs. Bakshish Singh, reported in 1999 (3) SLJ 1, held, that the charge of absence from duty did not survive when the period of absence from duty was regularized and converted into leave without pay. In the present case, the effect of the cancellation of transfer order would be as if it never was passed. In fact, the authorities ought to have immediately conveyed to the petitioner about the order passed by the Board. During the departmental proceedings, the petitioner requested the authorities to supply him with a copy of the order by which the Board had cancelled its earlier order of petitioner's transfer, as far as back as in April, 1996. Perhaps, to cover up their own fault of not conveying the Board's order or implementing it for nearly a period of two years, the authorities did not supply a copy of that order to him and tried to silence him by issuing the removal order, which, under the circumstances was not at all justified. The impugned order of removal of the petitioner and the impugned appellate orders, confirming that order cannot, therefore, be sustained and are hereby set aside. Rule is made absolute accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

[K.M. MEHTA, J.]
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